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Cases, Regulations and Statutes

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CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr.

ADVERSE POSSESSION

OPEN AND NOTORIOUS. The defendant purchased land next to the disputed property in 1929. The defendant erroneously assumed the purchased property included the disputed property because the purchased land and the disputed property were enclosed by a fence. The defendant repaired the fence and used the land to pasture cattle. The plaintiff purchased the disputed land in 1963, paid the real property taxes on the disputed property, and did not seek to quiet title until 1995. The plaintiff argued that the defendant could not acquire title by adverse possession because the defendant did not know the land belonged to someone else and made no public declaration of ownership. The court held that the construction and maintenance of the fence and use of the land for pasturing cattle were sufficient open and notorious acts to show the defendant's intent to claim ownership of the disputed land. **Krosmico v. Pettit, 968 P.2d 345 (Okla. 1998)**.

BANKRUPTCY

GENERAL-*ALM* § 13.03.*

EXEMPTIONS.

BURIAL PLOTS. The debtor owned four pre-purchased burial lots. The debtor was single and did not identify who were to be buried in the other three lots. The debtor claimed all four lots as exempt property under Tex. Prop. Code § 41.001(a) which allowed an exemption for one or more burial lots. The court acknowledged that the plain language of the exemption statute allowed an exemption for more than one lot, but the court reasoned that the exemption was available only to the extent the debtor could identify the persons who would use the lots. Because the debtor did not identify the persons to be buried in the other three lots, the court held that those lots could not be exempted. ***In re* Preston, 233 B.R. 375 (Bankr. E.D. Tex. 1999)**.

TENANCY BY THE ENTIRETY. The debtors were husband and wife and filed joint bankruptcy petitions. They owned a farm as tenants by the entirety. Under state law, tenancy by the entirety property is not subject to the individual debts of the owners and the debtors sought an exemption of the proceeds of the sale of the farm from the individual debts of each debtor. The trustee argued that the exemption did not apply because the debtors filed a joint petition and jointly listed their debts. The court held that the joint filing of the bankruptcy petition and listing of debts did not alter the debtors' ownership of the farm as tenants by the entirety; therefore, the farm proceeds were exempt from the individual debts of the debtors. ***In re* Brown, 234 B.R. 907 (Bankr. W.D. Mo. 1999)**.

FEDERAL AGRICULTURAL PROGRAMS

FLOOD COMPENSATION. The CCC has issued interim regulations providing a special Flood Compensation Program for farmers in certain counties affected by long-term flooding. Forty-two million dollars have been made available from proceeds from a disaster reserve. Farmers can, subject to certain payment limits, receive payment for the loss of the use of cropland or pastureland in eligible counties during the period from October 1, 1997 through September 30, 1998. The county must have been declared a disaster area under a Presidential Declaration or Secretarial Designation during a period specified in the rules, and land on at least one farm in the county must be cropland or pasture land that was flooded some time after October 1, 1992. Applicants must own or have a binding cash lease on the property and have owned it or leased it continuously since October 1, 1997. These rules are designed to address circumstances where changes in bodies of water may have produced widespread losses that might not otherwise generate assistance under other programs. At least $12 million of the total $42 million will be reserved for livestock producers because of the special needs of such producers. **64 Fed. Reg. 47358 (Aug. 31, 1999)**.

SMALL HOG OPERATIONS PROGRAM. The FSA has issued interim regulations amending the regulations for the Small Hog Operations Payment (SHOP) Program. Enactment of the 1999 Emergency Supplemental Appropriations Act made more funds available for the SHOP program, allowing the USDA to spend up to $175 million (including the $50 million allocated in the original interim rule). Payments will be made to producers in the order in which they were *filed*, to the extent that funds are available. As amended in this rule, the SHOP program regulations allow hog operations to receive up to $5,000 in total payments at a total rate of $10 for each eligible slaughter hog and $3.60 for eligible feeder pigs sold during the relevant marketing period. Also, this rule expands the program's eligibility provisions to allow operations to qualify so long as the operation did not sell 2,500 or more hogs during the relevant marketing period. In the original rule, the limit was set at less than 1,000 hogs. SHOP program payments already received by an eligible operation will be deducted from the expanded eligible amount an operation may have under the new rules. **64 Fed. Reg. 47097 (Aug. 30, 1999)**.

PEANUTS. The CCC has adopted as final regulations establishing the 1998 quota peanuts average support level of $610 per short ton, the national average support level for additional peanuts at $175 per short ton, and the minimum CCC export edible sale price for additional peanuts at $400 per short ton. The 1997 national poundage quota is 1,167,000 short tons. **64 Fed. Reg. 48938 (Sept. 9, 1997)**.

FEDERAL ESTATE AND GIFT TAX

ANNUITIES. The decedent had won a state lottery and was entitled at death to 17 more annual payments of over $500,000. State law prohibited the decedent from transferring or assigning any interest in the annual payments, although some previous lottery winners had done so. The decedent's estate argued that the restrictions required the value of the annuity to be discounted for lack of liquidity. The IRS sought use of the annuity valuation tables of Treas. Reg. § 20.2031-7. The court held that the annuity tables were insufficient to value the annuity because they did not account for lack of liquidity and allowed the estate to discount the value of the annuity as provided by expert testimony. **Estate of Schackleford v. United States, 99-2 U.S. Tax Cas. (CCH) ¶ 60,356 (E.D. Calif. 1999)**.

DISCLAIMERS. The taxpayer was the spouse of the beneficiary of a trust established by the beneficiary's parent. The taxpayer did not know that the taxpayer had a contingent remainder interest in the trust until after the spouse's death. At the spouse's death, the taxpayer's interest in the trust vested. The taxpayer filed a written disclaimer of the interest in the trust within nine months of learning about the interest in the trust. The IRS ruled that the taxpayer's disclaimer was effective so long as it was made within nine months after the taxpayer learned about the taxpayer's interest in the trust. Although not specifically discussed in the ruling, the apparent meaning is that the knowledge of the spouse about the trust (the spouse was a co-trustee for some time) was not attributed to the taxpayer. **Ltr. Rul. 9934011, May 27, 1999**.

FIDUCIARY LIABILITY. The taxpayer was the estranged spouse of a decedent and was appointed the personal representative of the decedent's estate. As representative, the taxpayer made several distributions from the estate in payment of delinquent child support payments owed to the taxpayer by the decedent under a judgment. The decedent had several tax deficiency assessments outstanding at the time of the distributions and the decedent and the estate were insolvent at the time of the distributions. The IRS assessed the taxpayer for the amount of the distributions plus interest. The court held that the taxpayer had knowledge of the taxes owed by the decedent when the distributions were made and allowed the IRS to hold the taxpayer personally liable for the estate's income tax deficiencies to the extent of the distributions. The court also assessed interest which accrued from the date of the distributions even though the assessment plus interest exceeded the amount distributed. **Estate of Johnson v. Comm'r, T.C. Memo. 1999-284**.

RETURNS. The IRS has announced that Form 706 (Rev. July 1999), United States Estate (and Generation-Skipping Transfer) Tax Return is now available. The form can be obtained either (1) by calling the IRS's toll-free telephone number, 1-800-829-3676; (2) via the World Wide Web at http://www.irs.gov/prod/cover.html; or (3) through FedWorld on the Internet.

VALUATION. The IRS has announced its acquiescence in the following case: The decedent's estate included stock in a family corporation owned by a QTIP trust, a revocable trust and the decedent personally. The IRS argued that the stock should be considered as owned as a block by the decedent. The court held that there was no authority for aggregating the ownership of the stock in one person where the stock was owned by a revocable trust and a QTIP trust. The IRS stated—

> "We agree with the Tax Court's opinion that closely-held stock held in a QTIP trust should not be aggregated, for valuation purposes, with stock in the same corporation held in a revocable trust and includible in the decedent's gross estate. The Tax Court's decision in this case is consistent with the Service's position regarding the valuation of minority interests passing to QTIP trusts. The proper funding of the QTIP trust should reflect, for example, the value of minority interests in closely-held entities or fractional interests in real estate that are used in satisfying the marital bequest."

Est. of Mellinger v. Comm'r, 112 T.C. No. 4 (1999), *acq.*, AOD (Aug. 30, 1999).

FEDERAL INCOME TAXATION

ALTERNATIVE MINIMUM TAX. The taxpayer was a U.S. citizen but lived and worked in Great Britain and Germany. The taxpayer paid income tax to those two countries and filed a U.S. income tax return which claimed the foreign tax payments as a credit against the U.S. income tax. The taxpayer did not report or pay any alternative minimum tax on the income. The court held that the foreign tax payments could offset no more than 90 percent of the AMT and that the reciprocal tax treaties with the two countries did not prohibit imposition of the alternative minimum tax to the extent not offset by 90 percent of the foreign taxes paid. **Pekar v. Comm'r, 113 T.C. No. 12 (1999)**.

BAD DEBTS. The taxpayers sold their farm and used some of the proceeds to lend money to two family members and a friend. The taxpayers did not make any other loans, did not advertise or otherwise hold themselves out as money lenders and did not report the loans as income or as a business on tax returns. The friend defaulted on the loan but the taxpayers did not make any attempt to enforce a security agreement or to collect on the loan. The court held that the taxpayers were not entitled to a business bad debt deduction because (1) the taxpayers were not in the money lending business and (2) the taxpayers failed to demonstrate that the loan was worthless in the tax year for which the deduction was claimed. The case is designated as not for publication. **Wuertz v. United States, 99-2 U.S. Tax Cas. (CCH) ¶ 50,795 (Fed. Cls. 1999)**.

BUSINESS INCOME. The taxpayer operated a service station which sold fuel, auto parts and various snack food items and provided automobile repair services for customers. The taxpayer did not keep complete records of all sales and expenses and reported proceeds from the sales of item and repair services less than the amounts expended for the goods. The IRS assessed a tax deficiency based upon an increase of the taxpayer's income. The IRS recomputed the taxpayer's income using a standard markup of 25 percent over the cost of the goods. The court upheld the IRS method of recomputing income where the taxpayer did not have accurate records to support the reported income and expenses. **Rataiczak v. Comm'r, T.C. Memo. 1999-285**.

CORPORATIONS-*ALM* § 7.02.*

EXPENSES. The taxpayer formed a corporation to operate a drywall and plaster business. The corporation entered into a lease for business premises in June 1995 and the taxpayer signed the lease in the capacity as an officer of the corporation. A third party guaranteed the lease. The taxpayer personally paid the security deposit and first month's rent. The corporation was dissolved in August 1995 and the lease was terminated. The guarantor made the early termination payment required by the lease, although the taxpayer claimed that the taxpayer was obligated to repay the third party. The taxpayer sought to claim a business deduction for the security deposit, rent payment and lease termination payment. The taxpayer argued that the corporation did not have any real existence. The court held that the expenses were obligations of the corporation which was properly formed for a substantial purpose; therefore, the taxpayer could not claim any of the corporation's expenses as personal deductions. **Bumpus v. Comm'r, T.C. Memo. 1999-299**.

DEBT INSTRUMENTS. The IRS has adopted as final regulations providing rules for the treatment of certain debt instruments that are indexed for inflation and deflation, including Treasury Inflation-Indexed Securities. The final regulations generally require holders and issuers of inflation-indexed debt instruments to account for interest and original issue discount (OID) using constant yield principles. In addition, the final regulations generally require holders and issuers of inflation-indexed debt instruments to account for inflation and deflation by making current adjustments to their OID accruals. **64 Fed. Reg. 48545 (Sept. 7, 1999)**.

DISASTER LOSSES. President Clinton, on Aug. 26, 1999, determined that certain areas in Minnesota are eligible for assistance from the federal government under the Disaster Relief and Emergency Assistance Act (42 USC 5121) as a result of severe ice storms, flooding and heavy rains on March 1, 1999. Accordingly, taxpayers who sustained losses attributable to the disaster occurring in the counties of Kittson, Marshall, Pennington, Polk, Red Lake and Roseau may deduct the losses on their 1998 federal income tax returns. **FEMA-1288-DR**.

EARNED INCOME CREDIT. This Chief Counsel Advice letter involved three situations: (1) a qualifying child lived with the child's parent and two grandparents who filed a joint return; (2) a qualifying child lived with the child's parent and two grandparents who filed separate returns; and (3) a qualifying child lived with the child's parent and one grandparent who filed a separate return from the other grandparent. The general rule is that, where a qualifying child lives with two possible EIC-eligible taxpayers, the EIC eligibility and amount are determined using the adjusted gross income of the individual with the highest adjusted gross income. In situation (1) the combined adjusted gross incomes of the grandparents is used because they filed a joint return. In situation (2) each parent and grandparent is treated as a separate individual, with the one with the highest gross income treated as the eligible individual. In situation (3) only the parent and the grandparent who reside with the child can qualify. **CCA Ltr. Rul. 9934017, June 28, 1999**.

The IRS has ruled that foster care payments excluded from gross income under I.R.C. § 131 are not included in earned income for purposes of the earned income credit. If the foster care payments are not excluded from gross income under I.R.C. § 131, the payments are not earned income if the payments do not qualify as self-employment income. If the foster care giver is in the business of providing foster care, the payments would be self-employment income and earned income for EIC purposes. **CCA Ltr. Rul. 9934018, June 28, 1999**.

HOBBY LOSSES-*ALM* § 4.05[1].* The taxpayers, husband and wife, were employed full-time as an attorney and accountant, respectively. The taxpayers purchased 13 acres of land with the intention of starting an Arabian horse breeding farm. The taxpayers cleared the land and constructed farm buildings, including a nine-horse barn. The husband attended several seminars on breeding, training, showing and selling horses and employed professional horse trainers. The taxpayers, however, did not consult with any expert on how to make the operation profitable, nor did they have a long-term business plan. The case involved 1991, 1992 and 1993 tax years, although the operation was carried on from 1983 through 1996. The taxpayers also had revenue from the raising of steers, averaging four steers per year, and from the boarding of horses belonging to others. The taxpayers maintained records of income and expenses for tax purposes but had no individual animal records nor any records which could be used to evaluate the profitability of the business. The operation never produced a profit. The court held that the farm operation was not entered into with the intent to make a profit because of several factors, as established in Treas. Reg. § 1.183-2(a): (1) the farm was not operated in a business-like manner because the taxpayers did not maintain sufficient records to evaluate the profitability of the business; (2) the taxpayers did not seek professional advice nor become trained in the economics of horse-breeding; (3) although the taxpayers and their daughter spent substantial amount of time on the activity, much of the activity was recreational; (4) the taxpayers had no expectation that the operation would ever become profitable; (5) although the taxpayers had success at their other business activities, they did not apply that expertise to the horse activity; (6) the activity produced only losses; and (7) the taxpayers had significant income from other sources. **Dodge v. Comm'r, 99-2 U.S. Tax Cas. (CCH) ¶ 50,809 (6th Cir. 1999), *aff'g*, T.C. Memo. 1998-89**.

IRA. The taxpayer owned interests in two IRAs and was less than 59 years old. The taxpayer had been divorced and as part of the divorce proceedings was required to pay the former spouse $29,000 in property settlement. The taxpayer failed to make that payment and was eventually ordered by a court to make the payment or face incarceration. The taxpayer had few other liquid assets and had to withdraw the funds from the IRAs. The taxpayer argued that the exception of I.R.C. § 408(d)(6) applied to exclude the early withdrawals from the taxpayer's gross income as withdrawals made incident to a divorce. The court held that withdrawals were included in gross income because the divorce decree did not require the withdrawal of IRA funds, only the payment of the fixed sum. **Czepiel v. Comm'r, T.C. Memo. 1999-289**.

INTEREST. The taxpayer was a shareholder in a corporation which engaged in the business of purchasing, holding, developing, leasing and selling real property. The corporation sold several properties which produced recognition of gain. After an IRS audit, the sales were determined to have produced more taxable gain than was reported and the taxpayer's personal tax liability was increased. The taxpayer paid the tax deficiency and interest and allocated some of the interest to the business, claiming a deduction for that portion of the interest. The IRS denied the interest deduction under Treas. Reg. § 1.163-9T(b) which disallowed all interest on taxes, regardless of the source of the tax. The District Court held that the regulation was invalid in that it disallowed a deduction for interest on a tax debt relating to a trade or business. The IRS argued that interest on a tax deficiency was not an ordinary expense of the taxpayer because this was the only time the taxpayer had incurred such an expense. The District Court held that the interest expense was an ordinary and necessary business expense because the interest arose from a restructuring of the sales transaction and involved a complex tax issue. The appellate court reversed, holding that interest on a tax deficiency is always a personal interest expense. The appellate court found legislative history concerning the passage of I.R.C. § 163 that supported congressional intent to characterize all interest on taxes as nondeductible personal interest. **Allen v. United States, 173 F.3d 533 (4th Cir. 1999), *rev'g*, 987 F. Supp. 460 (E.D. N.C. 1997)**.

MEAL EXPENSES. The IRS has announced its acquiescence in *Boyd Gaming Corporation v. Comm'r, 177 F.3d 1096 (9th Cir. 1999), rev'g T.C. Memo 1997-445*. The IRS stated, however, that it will still review such cases to

> "consider whether the policies decided upon by the employer are reasonably related to the needs of the employer's business (apart from a desire to provide additional compensation to its employees) and whether these policies are in fact followed in the actual conduct of the business. If such reasonable procedures are adopted and applied, and they preclude employees from obtaining a proper meal off the employer's business premises during a reasonable meal period, section 119 will apply."

AOD (no date given).

NET OPERATING LOSSES. The taxpayer claimed net operating losses from a farm and gas and oil leases; however, the taxpayer presented no records to support the losses except for copies of federal tax returns from two of the seven years in which the claimed losses occurred. The taxpayers claimed that the other returns were stolen but the taxpayers did not report the loss to the police on the theft report. The taxpayer also claimed that the taxpayer's mother had all the records, but the taxpayer did not present in evidence any of these records to substantiate the losses. The court held that the losses were properly denied. **Ashbrook v. Comm'r, T.C. Memo. 1999-300**.

PASSIVE ACTIVITY INCOME. The taxpayer owned five grantor trusts which owned several historical buildings. The buildings were renovated and leased to a C corporation wholly-owned by the taxpayer for use in the corporation's business. The taxpayer claimed rehabilitation credit for the renovations and characterized the rent income as passive investment income. The IRS denied the credit because the IRS recharacterized the rental income as nonpassive under the "self-rented" property rule of Treas. Reg. § 1.469-2(f)(6) and the attribution rule of Treas. Reg. § 1.469-4(a). The taxpayer attacked the validity of the regulations as exceeding the IRS authority under the statute. The court upheld the regulations and held that the characterization of the rental income as nonpassive caused the taxpayer to be ineligible for the rehabilitation credit. **Sidell v. Comm'r, T.C. Memo. 1999-301**..

RETURNS. Under the Taxpayer Bill of Rights 2, Pub. L. No. 104-168, § 1210, 110 Stat. 1452 (1996), the "timely mailing as timely filing/paying" rule of I.R.C. § 7502(a) can be met by using a designated private delivery service instead of the U.S. Postal Service. The IRS has announced that the designation of four private delivery services in *Notice 98-47, I.R.B. 1998-37, 8* remains unchanged. The designation of private delivery services is made annually on or before September 1 of each year. **Notice 99-41, I.R.B. 1999-35, 325**.

The IRS has announced that it now has a new home page address on the World Wide Web. The address of www.irs.gov replaces the previous address of www.irs.ustreas.gov. However, parties who bookmarked the old address will continue to be linked to the appropriate site.

S CORPORATIONS-*ALM* § 7.02[3][c].*

DISCHARGE OF INDEBTEDNESS. The taxpayer was a shareholder in an S corporation which realized discharge of indebtedness income. The taxpayer increased the basis of the taxpayer's S corporation stock by the taxpayer's share of the discharge of indebtedness income passed through the S corporation. At the time of the discharge of the indebtedness, the S corporation was insolvent. The increase in the stock basis enabled the taxpayer to deduct carried-over losses in a later year. The IRS argued that the discharge of indebtedness income was not an item of income for purposes of determining stock basis because discharge of indebtedness income was excluded under the insolvency exclusion rule of I.R.C. § 108. Following its decision in *Nelson v. Comm'r, 99-2 U.S. Tax Cas. (CCH) ¶ 50,646 (10th Cir. 1999), aff'g, 110 T.C. 114 (1998)*, the Tax Court held that, because the corporation was insolvent, I.R.C. § 108 caused an exclusion of the discharge of indebtedness income at the corporation level which was offset by reduction in tax attributes of the corporation, leaving no tax consequences to flow to the shareholders such as would increase the shareholders' basis in stock. **Eberle v. Comm'r, T.C. Memo. 1999-287**.

LANDLORD AND TENANT

LANDLORD'S LIEN. The plaintiff had cash leased crop land to a tenant for several years. The lease required a partial payment of $2,000 in July and $20,000 payment due the following January 2. In 1995 the tenant sold the grain to the defendant elevator and deposited the proceeds in an account with the defendant bank and on a loan from the bank. The

**Agricultural Law Manual* (ALM).

plaintiff sued the defendant elevator for conversion based upon the plaintiff's landlord's lien on the crop for unpaid rent. The trial court ruled for the defendant on the basis that the plaintiff had waived the lien by giving the tenant implied authority to sell the grain in that the final rent payment each year did not have to be made until after the crop was sold. The trial court had reasoned that the plaintiff would not have opposed any pre-January 2 sale because of the adverse tax consequences of bunching of income from two large rent payments. The appellate court reversed, holding that the plaintiff had taken no affirmative action which waived the plaintiff's rights under the lease or the landlord's lien. **Sauder v. Union Produce Co-op., 592 N.W.2d 695 (Iowa 1999)**.

PRODUCT LIABILITY

COMBINE. The plaintiff was employed as a farm laborer on a farm which was used for crop research. The farm crops had to be harvested with farm machines specifically modified for the research methods. The farm owned a combine manufactured by the defendant. The farm purchased the combine used and the combine's corn head had been repainted so that all the warning labels were covered with paint. The farm had the corn head modified for research purposes and again painted the cornhead, further covering the warnings. The plaintiff was injured when the plaintiff attempted to place crops into the cornhead from the front instead of from the side as instructed by the employer. The plaintiff acknowledged that other employees had warned the plaintiff not to approach the cornhead from the front. The plaintiff sought to have experts testify that the cornhead was defective for failing to have warning signs and awareness barriers. The expert testimony, however, did not include any designs for the barrier by the expert or available in the combine industry. The court held that the defendant manufacturer was not liable for failure to warn because the warning labels were painted over by separate owners beyond the control of the defendant. In addition, the court held that the expert testimony was properly excluded as not reliable. **Jaurequi v. Carter Mfg. Co., Inc., 173 F.3d 1076 (8th Cir. 1999)**.

TRACTOR. The plaintiff was killed in an accident while operating a tractor manufactured by the defendant. The tractor had caught fire and the plaintiff was killed while dismounting and remounting the tractor while it was moving. The plaintiff sued for negligent design and the manufacturer argued that Idaho's statute of repose, Idaho Stat. § 6-1403(2)(a), relieved the manufacturer of liability after the useful safe life had expired. The court held that the statute created only a presumption that, after ten years, the useful safe life of a product expired. The court also held that the plaintiff could submit expert testimony on the issue of whether the tractor had any useful safe life left at the time of the accident. The plaintiff also sought to introduce expert testimony as to the defendant employer's failure to warn the plaintiff about the fire hazard with the tractor and the danger of dismounting and mounting a moving tractor. The court held that the expert testimony could be excluded as to the fire hazard because there was not evidence that the plaintiff's death was caused by the fire; however, the testimony as to the danger of mounting and dismounting a moving tractor was admissible. **West v. Sonke, 968 P.2d 228 (Idaho 1998)**.

SECURED TRANSACTIONS

CONSTRUCTIVE TRUST. The plaintiff had cash leased crop land to a tenant for several years. The lease required a partial payment of $2,000 in July and $20,000 payment due the following January 2. In 1995 the tenant sold the grain to the defendant elevator and deposited the proceeds in an account with the defendant bank and on a loan from the bank. The plaintiff sued the defendant bank for the proceeds of the crop held as a constructive trust, based upon the plaintiff's landlord's lien on the crop for unpaid rent. The trial court ruled for the defendant on the basis that the plaintiff had waived the lien by giving the tenant implied authority to sell the grain in that the final rent payment each year did not have to be made until after the crop was sold. The trial court had reasoned that the plaintiff would not have opposed any pre-January 2 sale because of the adverse tax consequences of bunching of income from two large rent payments. The appellate court reversed, holding that the plaintiff had taken no affirmative action which waived the plaintiff's rights under the lease or the landlord's lien. The court remanded the case on the issue of whether the bank had notice of the lien when it accepted the proceeds of the crop. **Sauder v. Union Produce Co-op., 592 N.W.2d 695 (Iowa 1999)**.

STATE REGULATION OF AGRICULTURE

GRAIN BUYER'S BOND. A farmer sold harvested seeds to a licensed, bonded grain buyer who failed to make payment for the seed. The grain was delivered in nine installments over four months. Payment was not requested for any of the seeds until three weeks after the last delivery. The farmer filed a claim on the bond within 180 days after the last delivery but more than 180 days after the previous deliveries. The bond holder argued that Minn. Stat. § 223.17 required claims to be filed within 180 days after each shipment covered by the bond. The court held that, although the statute sets forth a different requirement for tendering payment after the final shipment of a multi-shipment order, the statute required claims to be filed within the 180 days after each shipment. Therefore, because the claim was filed within 180 days after only the last shipment, the claim on the bond was limited to the value of the last shipment. ***In re* Grain Buyer's Bond of Mischel Grain & Seed, 591 N.W.2d 734 (Minn. Ct. App. 1999)**.

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